

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

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MARIA L. PETERSON &
DENNIS L. PETERSON,
5846 Spruce Creek Woods Dr.
Port Orange, Florida,

Plaintiffs,

v.

PDQ FOOD STORES, INC.,
8383 Greenway Blvd.
Middleton, WI 53561-0997

ATTORNEY THOMAS AIELLO &
NICHOLAS INFUSINO,
1108 56th St.
Kenosha, WI, 53140

LAKEVIEW INVESTMENTS LLC,
c/o Attorney Michael F. Dubis
208 E. Main St.,

Defendants.

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On April 10, 2009, I dismissed this case for lack of jurisdiction because plaintiffs were attempting to appeal state court decisions. I advised plaintiffs that if they did not agree with

the decisions of the Circuit Court for Kenosha County, the Wisconsin Court of Appeals and the Wisconsin Supreme Court, their only recourse was to petition the United States Supreme Court for a writ of certiorari to hear their claim.

Now plaintiff have filed a notice of appeal of the April 10, 2009 decision. Because they have not paid the \$455 fee for filing a notice of appeal, I construe the notice as including a request for leave to proceed in forma pauperis on appeal.

As an initial matter, I note that plaintiffs' appeal may be untimely. However, only the court of appeals may determine whether it has jurisdiction to entertain an appeal. Hyche v. Christensen, 170 F.3d 769, 770 (7th Cir. 1999). The district court's role with respect to an appeal is limited. A district court has authority to deny a request for leave to proceed in forma pauperis under 28 U.S.C. § 1915 for one or more of the following reasons: the litigant wishing to take an appeal has not established indigence, the appeal is in bad faith or if the litigant is a prisoner and has three strikes. § 1915(a)(1),(3) and (g). Sperow v. Melvin, 153 F.3d 780, 781 (7th Cir 1998).

Plaintiffs' request for leave to proceed in forma pauperis on appeal will be denied, because I am certifying that their appeal is not taken in good faith. In Lucien v. Roegner, 682 F.2d 625, 626 (7th Cir. 1982), the court of appeals instructed district courts to find bad faith where a plaintiff is appealing the same claims the court found to be without legal merit. See Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000). Plaintiffs are trying to appeal the same

claims that I dismissed for lack of jurisdiction. Because there is no legally meritorious basis for plaintiffs' appeal, I must certify that the appeal is not taken in good faith.

Because I am certifying plaintiffs' appeal as not having been taken in good faith, they cannot proceed with their appeal without prepaying the \$455 filing fee unless the court of appeals gives them permission to do so. Pursuant to Fed. R. App. P. 24, plaintiffs have 30 days from the date of this order in which to ask the court of appeals to review this court's denial of leave to proceed in forma pauperis on appeal. Their motion must be accompanied by an affidavit as described in the first paragraph of Fed. R. App. P. 24(a), including a statement of issues that plaintiffs intend to present on appeal. Also, plaintiffs' motion must be accompanied by a copy of this order. Plaintiffs should be aware that these documents should be filed in addition to the notice of appeal they have previously filed. If plaintiffs do not file a motion requesting review of this order, the court of appeals may not address the denial of leave to proceed in forma pauperis on appeal. Instead, it may require plaintiffs to pay the entire \$455 filing fee before it considers their appeal. If plaintiffs fail to pay the fee within the deadline set, it is possible that the court of appeals will dismiss the appeal.

ORDER

IT IS ORDERED that request of plaintiffs Maria L. Peterson and Dennis L. Peterson for leave to proceed in forma pauperis on appeal is DENIED. I certify that their appeal is not taken in good faith.

Entered this 7th day of October, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge